IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Appeal No.852 of 1990

1. Shrishail Bhimsha Ghale
2. Suglabai Bhimsha Ghale
3. Bhimsha Malkappa Ghale — Appellants

Vs.

The State of Mahrashtra — Respondent

Mr.P.M.Mengane for appellants.
Mr.Y.M.Nadhawa, APP for State.

CORAM : B.H.MARLAPALLE, J.

Reserved on : July 19, 2007.
Pronounced on : August 27, 2007.

JUDGMENT:

1. This appeal arises from the order of conviction and sentence passed by the learned IInd Addl. Sessions Judge at Solapur on 23/11/1990 in Sessions Case No.115 of 1990 and for the offences punishable under Section 304-B read with Section 34 of IPC and Section 201 read with Section 34 of IPC. On the first charge the accused no.1 has been sentenced to suffer RI for ten years and to pay a fine of Rs.500/- whereas accused nos.2 and 3 have been sentenced to suffer RI for seven years and to pay a fine of Rs.100/-. For the second charge all the accused have been sentenced to suffer RI for one

year and to pay a fine of Rs.100/-. All the accused have also been convicted for the offence punishable under Section 498-A read with Section 34 of IPC. However, no separate sentence has been awarded in view of the sentences already awarded as above. The substantive sentences have been directed to run concurrently. All the accused are held to be entitled to set off for the period of detention already undergone by each of them, if any. It appears, during the trial the accused were released on bail and they were also granted bail by this Court as per the order dated 5/12/1990. The accused were acquitted from the offence under Section 302 read with Section 34 of IPC.

2. As per the prosecution case Mahadeo Mali, resident of village Mulegaon gave his daughter Shevanta in marriage to the accused no.1, the son of the accused nos.2 and 3 and resident of village Mandrup and the marriage was performed on 17/5/1989 at village Mandrup. He had agreed to give a dowry of Rs.4000/- and out of the same he agreed to pay an amount of Rs.3000/- at the time of marriage and the remaining amount of Rs.1000/- and cot and mattress be given after marriage and accordingly he had paid the

amount of Rs.3000/-. Shevanta was renamed in her matrimonial home as Surekha. She was being harassed and ill-treated on the demand of remaining amount of Rs.1000/- and the other articles as promised during marriage. Within eight days of marriage she was brought back to her parents' house and was informed by her mother-in-law that she must return with the remaining amount and the articles as promised. On 3/8/1989 Somling Malleshi Ghale - PW 10 and cousin of the accused no.1 went to village Mulegaon and informed Surekha's mother at about 12-30 noon that Surekha died suddenly while cooking. Surekha's parents, brothers and other relations reached village Mandrup between 3 to 4 p.m. They saw that the dead body was kept in the inner room which was dark. Around 5 p.m. the dead body was taken out for cremation and at the cremation ground the relations of the deceased objected on the ground that in their community (Mali) the dead bodies are buried and they are not cremated. The residents of village Mandrup who were present at the crematorium and the accused insisted that the deceased would be cremated and at this stage the mother of the deceased Sonabai and her aunt Dhulabai insisted to see at least the face of the deceased but this was avoided. However, these

two ladies went ahead and removed the saree from the face of the deceased and noticed that around the neck of the deceased there were injury marks. The persons from Mandrup village returned from the crematorium and the dead body was not cremated. Revansidha son of Mahadev Mali - PW 3 and the brother of the deceased went to Mandrup Police Station and lodged the complaint which came to be registered as an FIR (Exh.19). CR No.22/89 came to be registered by Damodhar Gangaram Gaikwad, PSI - PW 11. He went to the cremation ground and held the inquest panchanama (Exh.17). He was told that it was the dead body of Surekha Ghale. Firewood and seized articles were recorded in the panchanama at Exhibit 10 and on the next day the accused were arrested. PSI Gaikwad took over the investigation, sent the dead body for post mortem, to Dr. V.M.Medical College, Civil Hospital, Solapur. Dr.S.S.Sardar, Lecturer in Forensic Medicine conducted the post-mortem on 4/8/1989 between 8 a.m. to 9 a.m. and filled in the post mortem report at Exhibit 27 certifying the cause of death as "asphyxia as a result of strangulation". On completion of investigation the charge-sheet was filed and charge was framed on committal of the case on 29/10/1990. All the accused pleaded not guilty

and took the defence of alibi i.e they were not present in the house when Surekha died on 3/8/1989.

3. As per the charge framed on 29/10/1990 the accused were charged for the offences punishable under Section 498-A read with Section 34 of IPC, Section 304-B read with Section 34 of IPC and in the alternate under Section 302 read with Section 34 of IPC and Section 201 read with Section 34 of IPC.

. The prosecution examined eleven witnesses i.e. PW 1 - Dr.Shivaji Shah, PW 2 - Kashibai Mhetre, PW 3 - Revansidha Mali, PW 4 - Gangadhar Gaikwad, PW 5 - Dr.S.S. Sardar, PW 6 - Daji Jadhav, PW 7 - Police Constable Machindra Laxman Kurle, PW 8 - Dhulabai Babusha Mali, PW 9 - Subhash Jodmote, PW 10 - Somling Ghale and PW 11 - Damodhar Gaikwad. The defence also examined one witness i.e. Malsidha Jodmote - DW 1.

4. The trial Court in the impugned order of conviction and sentence has held that Surekha @ Shevanta died a homicidal death but the accused could not be held to have committed the murder of Surekha on 3/8/1989. The learned counsel for the appellants submitted that the finding of the trial Court is

erroneous and the deceased in fact committed suicide. Let it be noted at this stage itself that the accused had though denied the charges framed against them, in the statement recorded under Section 313 of Cr.P.C. all of them have taken the defence of alibi. At the same time through the evidence of PW 10 Somling Ghale and supported by the evidence of PW 3 Revansidha Mali, the prosecution initially claimed that Surekha died while cooking and thus a case of accidental death but in the cross-examination of PW 3 Revansihda Mali and the cross-examination of PW 9 Subhash Jodmote as well as the defence witness DW 1 Malsidha Jodmote, the prosecution pleaded that Surekha committed suicide as she was not happy to have been married to the accused no.1 who was either blind by one eye or he is a squint eyed person. It would be, therefore, necessary to examine the medical evidence regarding the cause of death of Surekha. Dr.Shah - PW 1 was the Medical Officer who had examined the deceased on 3/8/1989. He stated before the Court that he was a practitioner at village Mandrup for the last five years and on 3/8/1989 at about 11 a.m. ST Driver Subhash Jodmote - PW 9 had come to his dispensary and requested him to accompany him to see a patient. Dr.Shah, therefore, went to the house of

the accused and found that the patient was lying inside the room which was dark and the patient was about 19 years old female by name Surekha. On examination he found that her pulse was not found recordable and there was no respiration and hence he declared her dead. He produced the relevant case papers at Exhibit 15 which is the death certificate and it stated that the patient was dead before the doctor arrived. In his cross-examination he stated that he had not examined the body of the patient and had only seen the pulse and the heart beat and, therefore, could not see any injuries on the body of the patient. After PW 3 - Revansidha Mali lodged the FIR at Exhibit 19 with the Mandrup Police Station, PW 11 D.G.Gaikwad, PSI at Mandrup Police Station had visited the crematorium and inquest panchanama at Exhibit 17 was held and the same was proved by the evidence of PW 2 Kashibai Mhetre. She stated that she had, as a lady panch, seen the body of the deceased and had noticed ligature marks in reddish colour around the neck. She had signed the inquest panchanama at Exhibit 17 and the contents therein were correct. PW 7 Machindra Kurle Police Constable had carried the dead body of Surekha to the Civil Hospital at Solapur for post-mortem on 3/8/1989 and

he stated that he carried the dead body in a tempo at about 8 p.m. and after the post mortem on the next day, the dead body was handed over to the complainant PW 3 for last rites. PW 5 Dr.Subhashchandra Sardar, who was the Lecturer in Forensic Medicine at Dr.V.M. Medical College and Civil Hospital at Solapur had performed the post-mortem of the dead body of Surekha. He stated that he was attached to the Civil Hospital since 1979 and had conducted about 5000 autopsies. The dead body of Surekha was brought by the Police Constable of Mandrup Police Station on 3/8/1989 at about 11.30 p.m. to the Civil Hospital and he conducted the post-mortem on the said body on 4/8/1989 between 8 a.m. to 9 a.m. On examination he found the ligature marks in front of the neck, well marked below the thyroid cartilage, marked completely encircled - the neck, transversely more prominent on the front and the side than back. He noticed bruises immediately above and below the groove base. Base of the groove was dry, hard parchlike skin abraded. On dissection of ligature marks he noticed haemorrhage in tissue, in and above the area of compressed and adjacent muscle lacerated. There were extensive bruises of deep tissues, fracture of hyoid cartilage, fracture of cricoid cartilage. He opined that these

injuries were ante mortem. The internal injuries noticed by him were consisting of sub pleural haemorrhage, fracture of both larynx and trachea, haemorrhage in mucosa of the larynx and marked congestion. The lungs were showing echymosis and had subpleural haemorrhage. He had also noticed dark colour blood exudate. As per his opinion the cause of death of Surekha was "asphyxia as a result of strangulation". The viscera preserved by him was also sent to the Chemical Analyser but no recognizable poison was detected on analysis as revealed from Chemical Analyser's report at Exhibit 26. In his cross-examination he admitted that strangulation can also be suicidal. However, he ruled out the possibility of suicidal hanging in the case of Surekha and denied such a suggestion categorically. He also admitted that in order to cause hanging by suicide the ligature marks are found oblique and he stated that the ligature marks in the present case were found transverse and encircled the neck and transverse indicates horizontal. He also made it clear that dry blood was present near mouth and nostrils and opined that in the case of homicidal strangulation saliva is found absent. In his examination-in-chief he also admitted that the

ligature marks on the dead body of Surekha noticed by him could be possible in case of use of rope (Article no.18) for strangulation and the strangulation in question must be homicidal and it must have been done by more than one person. Some suggestions were put to him in support of the theory of suicidal death and he stoutly rejected the possibility of suicidal death of Surekha.

5. It is also pertinent to note that when Dr. Shah visited the house of the accused at 11 a.m. on the date of the incident, Surekha was not seen hanging on some rope and in fact as per Dr.Shah the patient was lying in the inner room. He was informed by PW 9 and as told to him by accused no.2 that the patient was unconscious and had suddenly taken ill. Accused no.2 was present when Dr.Shah visited her house and at no point of time any of the accused reported to the police station at Mandrup that Surekha committed suicide by hanging. The medical evidence of Dr.Sardar - PW 5 unerringly proved that Surekha died a homicidal death and as per him the ligature marks noticed around her neck could be possible by a rope like article no.18.

. The learned Judge of the trial Court has acquitted the accused from the alternate charge punishable under Section 302 read with Section 34 of IPC solely on the ground that the recovery of article 18 made at the instance of the accused no.1 could not be connected to the strangulation of Surekha and the chain of circumstantial evidence was broken on the ground that the presence of any of the accused before 11 a.m. on the date of the incident could not be proved by the prosecution and, therefore, the prosecution failed to prove that the accused or any one of them had murdered Surekha. Unfortunately there is no appeal against this acquittal filed by the State before this Court.

6. Be that as it may, the trial Court has upheld the prosecution case and convicted the accused for the offence punishable under Section 304-B read with Section 34 of IPC. In order to convict an accused for an offence punishable under Section 304-B of IPC, the following essentials must be satisfied,

(a) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(b) such death must have occurred within 7 years of her marriage;

(c) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband; and

(d) such cruelty or harassment must be for or in connection with demand of dowry.

7. It is only when the aforementioned ingredients are established by acceptable evidence such death shall be called "dowry death" and such husband or his relative shall be deemed to have caused her death. In the case of an offence punishable under Section 304-B of IPC an exception is made by a deeming provision as to nature of death as "dowry death" and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Under Section 4 of the Evidence Act whenever it is directed by the said Act that the Court shall presume the fact, it shall

record such fact as proved unless and until it is disproved. The Court has no option but to presume the accused have caused dowry death unless the accused disproved it. It is a statutory compulsion on the Court. However, it is open to the accused to adduce such evidence for disproving such compulsory presumption as the burden is unmistakably on him to do so and he can discharge that burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both. Section 113-B of the Evidence Act is also relevant while examining the charge under Section 304-B of IPC as the said Section deals with the presumption as to the dowry death. It would be, therefore, necessary to examine for the Court whether the accused have committed the dowry death of Surekha. The conjoint reading of Section 113-B of the Evidence Act and Section 304-B of IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of natural or accidental death so as to bring it within the purview of death "occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where

Section 113-B of the Evidence Act and Section 304-B of IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the presumption operates. The evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of "soon before occurrence" as has been well settled. The expression "soon before her death" used in Section 304-B of IPC and Section 113-B of the Evidence Act is present with the idea of proximity test.

8. Let us, therefore, examine the prosecution case of dowry death on the basis of the evidence of PW 3 Revansidha, PW 6 Daji Jadhav and PW 8 Dhulabai. PW 3 in his examination-in-chief before the trial Court stated that the deceased Surekha was married to the accused no.1 on 17/5/1989 and the said marriage was arranged on settled payment of dowry at Rs.4000/- out of which an amount of Rs.3000/- along with some utensils was paid during the marriage and the remaining amount of Rs.1000/- along with a bed was

agreed to be given to the accused within two months of the marriage i.e. during the festival of Nagpanchami. The marriage was performed at village Mandrup and he is the resident of village Mulegaon. As per him after marriage the deceased went to reside with her husband at Mandrup and PW 8 had accompanied her. She came back to village Mulegaon on 19th May 1989 along with PW 8. The brother of accused no.1 had thereafter come to Mulegaon to take Surekha to Mandrup and she had gone along with him. She stayed there for few days and was again dropped back by her brother-in-law after 8-10 days. As per PW 3, the brother-in-law told that the balance amount of dowry and cot and bed as agreed was required to be sent when Surekha would return to the matrimonial home. Surekha also told the complainant that her in-laws and husband were insisting for giving the balance amount and other articles. They were abusing her and expressing displeasure against her for not fulfilling the promise. Surekha stayed at Mulegaon for one month and thereafter complainant and his cousin Chandu Mali took her to village Mandrup. He stated that he had requested the accused not to ill-treat Surekha and he would fulfil their demand of remaining amount and the articles within a short span of time.

He went back to his village and eight days thereafter two persons from Mandrup came to his village and told his mother that Surekha was dead. He had returned from Solapur at about 2 p.m. and his mother told him about the death of Surekha. All the relations reached Mandrup at about 4 p.m. on the date of incident and found that dead body of Surekha was kept in the inner room, which was dark. The persons from village Mandrup did not allow his party to go near the dead body and the dead body was given bath after sometime. They had asked to bring the dead body in the front room but the accused persons did not agree for the same. At about 6 p.m. the dead body was taken to cremation ground where he noticed that arrangement was made for cremation and he and his party objected for the same. At that stage his mother Sonabai and aunt Dhulabai told the accused persons that they should be shown at least the face of the deceased Surekha and, therefore, they removed the saree from her face. They noticed ligature marks on the neck and shouted that they were deceived. He also saw the face of Surekha and noticed the ligature marks on neck. The accused persons and the villagers from Mandrup left the cremation ground and he went to the police station and lodged the complaint. In the

cross-examination he denied that Surekha had not seen accused no.1 before her marriage. He pointed out that the engagement had taken place during the Diwali festival and there was a gap of more than six months till the marriage was performed. He also pointed out that accused no.1 had visited his house on one or two occasions before the marriage took place on 17/5/1989. He denied that the accused no.1 was a blind person. However, he admitted that he was a squint eyed person. He denied the suggestion that there was no agreement to pay Rs.4000/- as dowry and other articles and that Rs.3000/- were to be paid at the time of marriage and the balance was to be paid within two months. He denied the suggestion that the performance of marriage was delayed because Surekha was not ready to marry the accused no.1. He admitted that Subhash Jodmote, Malsidha Jodmote of village Mandrup were present for marriage and also denied the suggestion that he asked Surekha to marry the accused no.1 otherwise they would be defamed in the society. The defence in its cross-examination tried to point out contradictions / improvements in his testimony as compared to the FIR at Exhibit 19 and more particularly regarding his request to the accused persons not to ill-treat the deceased on account of

dowry and that he would arrange to pay the balance amount within short time and that Surekha was ill-treated and harassed on account of the balance amount of dowry. Though these statements do not find place in the FIR at Exhibit 19, however it was not put to the I.O. PW 11 during his cross-examination by the defence. The FIR was filed immediately he left the crematorium on the date of incident and his mental framework at that point of time must be kept in mind while scanning the FIR.

. PW 6 Daji is a neighbour of PW 3 and he was one of the persons who was also present when the marriage of Surekha was fixed with accused no.1 by negotiations at village Mandrup. He stated in his depositions that he had gone to village Mandrup along with Tamma Mali, Sidhu Mali, Appa Mali, Revansidha Mali as well as the father and mother of the deceased. He had gone to the house of the accused persons and the marriage was settled on payment of Rs.4000/- dowry, cot, bed, clothes, utensils. He also stated that before settlement of the said marriage the accused persons had also come to village Mulegaon to see Shevanta @ Surekha. One month after the settlement of marriage accused no.1 and his

friend had come to Mulegaon to see Shevanta and he had visited the house of the complainant at that time. All of them had taken lunch together and they left Mandrup at about 4 p.m. He had attended the marriage ceremony of Shevanta and accused no.1 and he stated that at the time of marriage, the father of Shevanta told accused no.3 that he had brought only Rs.3000/- and would give the balance amount of Rs.1000/- afterwards along with cot and bed. Rs.3000/- were paid to accused no.3. He further stated that after the marriage ceremony Shevanta stayed in the house of the accused along with PW 8 Dhulabai for two days and she returned to village Mandrup. 10-12 days thereafter brother-in-law of Shevanta had brought Shevanta to village Mulegaon in the month of Ashadh and that time she started complaining that she was being ill-treated for non fulfilment of balance amount and articles. The same was told to him by PW 3 Revansidha. After a month or so Revansidha and his cousin Chandu Mali had taken Shevanta to the house of accused no.1 and told the accused persons that the balance amount of dowry and articles would be given within one or two months. This was disclosed to him by Revansidha PW 3. He further stated that on the date of the incident when

the messenger from village Mandrup came to village Mulegaon to give the news of Shevanta's demise, they were told that Shevanta became faint suddenly and while cooking she died before the doctor reached the house. The testimony of PW 8 on the point of dowry demand and ill-treatment to Surekha suffers from improvisations / contradictions and, therefore, it would not be safe to rely upon the same. However, the testimony of PW 3 Revansidha and PW 6 Daji clearly established the prosecution case that just about 8-10 days before the death of Shevanta @ Surekha there was a demand of dowry that is the balance amount of Rs.1000/- and other articles made by the accused persons and she was being harassed and ill-treated on that count. Revansidha had assured the accused persons that the said demand will be met during the festival of Nagpanchami. The marriage had taken place on 17/5/1989, the deceased had returned to her parental home on 19/5/1989 and within 8-10 days therefrom she was taken back to village Mandrup by her brother-in-law. She stayed in the matrimonial home for more than a week and was brought back by her brother-in-law to village Mulegaon. The brother-in-law had also conveyed the demand of remaining amount and articles to the brother of the

deceased when he dropped the deceased back to Mulegaon. Within a span of about 2 and 1/2 months from marriage Surekha met homicidal death. The demand of dowry and the ill-treatment on account of the same was proved to be soon before her death as per the prosecution evidence. The accused through the evidence of PW 9 and more particularly his cross-examination by the defence after he was declared hostile by the prosecutor, tried to put forth the defence that Shevanta was unhappy with the marriage, she did not like the accused no.1 and that she committed suicide. Through the evidence of DW 1, the defence tried to demolish the prosecution case of dowry demand and this witness has been found to be unreliable by the trial Court. Similarly the cross-examination of PW 9 as conducted by the defence counsel was also found to be suffering from the contradictions as is clear from the depositions of PW 11, the I.O. Having regards to the evidence of PW 3 and PW 6 the prosecution unerringly proved the dowry death of Surekha and the defence failed to discharge its burden against the presumption under Section 113-B of the Evidence Act, in this regard. The findings of the trial Court on the offence punishable under Section 304-B read with Section 34 of IPC are,

therefore, required to be upheld.

9. Now coming to the offence punishable under Section 498-A of IPC, it has two parts defining the terms "cruelty" as follows:

> (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
>
> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

10. On sifting the evidence of PW 3 and PW 6, it is clear that clause (a) of Section 498-A of IPC is not attracted in the instant case but surely clause (b) of the said Section does stand established. It would be enough if such harassment is with a view to coercing the married woman by in-laws or by the

husband or their relations to meet any unlawful demand for any property or valuable security and it is not necessary that as a consequence of the said harassment, she should be driven to commit suicide. There is enough evidence brought on record by the prosecution through the testimony of PW 3 and PW 6 that the deceased was harassed for the demand of remaining dowry amount of Rs.1000/- and the articles like cot and bed etc. while she was staying in the company of the accused after the marriage. She was ill-treated by giving abuses and expressing their displeasure on account of non fulfilment of the promise of dowry and this ill-treatment was by all the accused. Hence the trial Court has rightly convicted the accused for the offence punishable under Section 498-A read with Section 34 of IPC.

11. The trial Court has held all the accused guilty of screening the evidence regarding the homicidal death of Surekha. The evidence of PW 3 Revansidha, PW 6 Daji and PW 8 Dhulabai clearly went to show that the dead body of Surekha was kept inside the dark room and around 5 p.m. it was brought out and given bath by the accused party. None of the relations of the complainant were allowed to see the

dead body till it reached crematorium. At the crematorium the complainant party opposed the cremation on the ground that in their community the married woman's body is buried and not cremated. When the accused party were insisting to cremate the dead body of Surekha, the mother of the deceased and PW 8 Dhulabai removed the saree from the face of the deceased and noticed ligature marks around her neck and they shouted saying that they were deceived. It has also come in the evidence of PW 3, PW 6 and PW 8 as well as DW 1, PW 9 and PW 10 that the accused party and the villagers of Mandrup who were present at the crematorium left the crematorium after the dead body was seen by the complainant party and the complainant proceeded to file his complaint with the Mandrup police station. It has come in the evidence of PW 10 Somling Ghale that he was sent as a messenger to village Mulegaon to inform that Surekha had expired suddenly while cooking. In their statements recorded under Section 313 of Cr.P.C. the accused no.1 stated that on the day of the incident he had gone to Solapur to distribute milk and returned between 4 to 4.30 p.m. Accused no.2 claimed that she had taken the cows for grazing and one woman residing in her lane told that her daughter-in-law

had fallen down in the house. This woman messenger has not been examined before the trial Court by the defence. The accused no.3 stated that on the day of the incident he had left his home and gone to do labour work and on his way back he learnt about the death of his daughter-in-law. When the plea of alibi was taken it was necessary for them to prove the same and the accused failed to do so. When Dr.Shah - PW 1 visited the house of the accused at about 11 a.m. on the date of the incident, he was never informed that the patient was unconscious but on checking the pulse Dr. Shah realised that the patient was already dead before he reached the house of the accused. The evidence placed on record by the prosecution proved the charge punishable under Section 201 against the accused collectively beyond any doubt and, therefore, the order of conviction for the offence punishable under Section 201 read with Section 34 of IPC calls for no interference in this appeal.

12. On the point of sentence, the learned counsel for the appellant submitted that the offence had taken place about 18 years back and the accused have been on bail all along. The accused no.3 is close to 80 years whereas the accused no.2 is close to 70

years. Accused no.1 has subsequently married and his children to support. If he is taken in custody now his family members will be thrown on the streets and that in any case he is blind by one eye. As per the learned counsel it would be too harsh for the accused to undergo sentence at this stage and, therefore, he prayed that all the accused should be given the protection of Section 4 of the Probation of Offenders Act, if this Court confirms the order of conviction impugned in the appeal. In the case of State of Karnataka v. M.V. Manjunathegowda and anr. **[AIR 2003 SC 809]** the question of quantum of punishment in the case of "dowry death" fell for consideration before the Apex Court and Their Lordships observed in para 23 as under:

> "...While considering the quantum of punishment, the Court must keep in view the background and intendment of the legislature so as to eradicate the evil practice of giving and taking dowry by prescribing the deterrent punishment. This was clear from the Objects and Reasons of Amending Act of 1986 (Act 43 of 1986). Consequent upon the aforesaid amendment Section 304-B, IPC was introduced in

which the punishment is, imprisonment for a terms which shall not be less than seven years but which may extend to imprisonment for life. As would reveal from the various amendments as noticed above, despite stringent law, the evil practice of giving and taking of dowry remains unabated. On the contrary, it is menacingly on the increase. ... ... The practice of giving and demanding dowry is a social evil giving deleterious effect on the entire civilized society and has to be condemned by the strong hands of judiciary. Despite various amendments providing deterrent punishment with a view to curb the increasing menace of dowry deaths, the evil practice of dowry remains unabated. The Court cannot be oblivion to the intendment of the legislature and the purpose for which the enactment of the law and amendment has been effected. Every Court must be sensitized to the enactment of the law and the purpose for which it is made by the legislature. Keeping in view the evil practice of giving and taking dowry, which is having a deleterious effect on the civilized society, it must be given a meaningful

interpretation so as to advance the cause of interest of the society as a whole. No leniency is warranted to the perpetrator of the crime against the society...."

. It has come in the evidence of PW 5 Dr. Sardar that the strangulation on account of which Surekha died must be by more than one persons. None of the accused went to the police station which was located in their own village Mandrup to file a complaint that Surekha died an accidental death or she committed suicide. Even after PW 1 Dr.Shah declared Surekha dead, accused no.2 or neither of the accused have taken any steps to file a complaint with Mandrup Police Station and on the contrary every attempt was made to screen the evidence regarding the homicidal death of Surekha. At the first instance the complainant's party was communicated that Surekha died suddenly and while cooking. When they reached the house of the accused between 2 to 3 p.m. on the date of the incident, they were not allowed to see the deceased and it was only at the place of crematorium that her mother and aunt opened her covered face and noticed the ligature marks. If the accused party had agreed to bury the dead body, there

was every possibility that the crime could have gone unnoticed and the accused would go scot free. These are the aggravating circumstances as against the mitigating circumstances pointed out by the learned counsel for the accused. On account of this appeal having been pending for more than 17 years, once the order of conviction has been confirmed for the offence punishable under Section 304-B read with Section 34 of IPC, the period of sentence cannot be reduced below seven years by the trial Court or the Appellate Court but the sentence period for the offence punishable under Section 201 read with Section 34 of IPC can be reduced having regards to the advanced age of accused nos.2 and 3.

13. I am, therefore, satisfied that no reconsideration on the point of sentence as awarded to accused no.1 is called for and the contentions that he is blind by one eye and has the responsibility of three children and the wife is no ground to extend to him the benefit of Section 4 of the Probation of Offenders Act, 1958.

. At the same time the case of accused nos.2 and 3 will have to be considered keeping in mind the

advanced age of both of them. In my considered opinion they deserve to be given the benefit of Section 4 of the Probation of Offenders Act, 1958 and rather than sending them to suffer the sentence at once, it would be expedient to release both of them on probation of good conduct. The bar under Section 4 of the Probation of Offenders Act does not operate in their case. At the same time it would not be expedient to call for a report from the Probation Officer concerned in respect of these two accused having regards to their advanced age and that there is nothing on record to show that they were involved in some other case or they are habitual offenders. However, they could be directed to report to the Probation Officer concerned, once in a month so that he has the supervision over the behaviour of these two accused.

14. In the premises, the order of conviction and sentence passed by the learned IInd Additional Sessions Judge at Solapur in Sessions Case No.115 of 1990 for the offences punishable under Section 304-B read with Section 34, Section 201 read with Section 34 and Section 498-A read with Section 34 of IPC is hereby confirmed against the accused no.1 - Shrishail

Bhimsha Ghale. The substantive sentences to run concurrently. He shall be entitled to set off for the period of sentence already undergone by him, if any. He shall surrender forthwith to undergo the sentence.

. The order of conviction passed in Sessions Case No.115 of 1990 for the offences punishable under Section 304-B read with Section 34, Section 201 read with Section 34 and Section 498-A read with Section 34 of IPC is hereby confirmed against accused nos.2 and 3. However, instead of sentencing accused nos.2 and 3, they are hereby directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 and they shall be kept on probation for a period of two years during which period each one of them shall report to the Probation Officer of their District i.e. Solapur once in a month and if the Probation Officer notices or learns anything adverse against their behaviour or any one of them, then at the first instance he shall advise / warn them and thereafter shall report the same to the learned Principal District and Sessions Judge at Solapur.

. The appeal is partly allowed in the above terms.

(B.H.MARL